



SMALL BUSINESS ADMINISTRATION

13 CFR Part 109

RIN 3245-AH15

Regulatory Reform Initiative: Intermediary Lending Pilot Program

AGENCY: U. S. Small Business Administration.

ACTION: Final rule.

SUMMARY: The U.S. Small Business Administration (SBA) is removing three regulations governing the application and selection process for Intermediary Lending Pilot (ILP) program Intermediaries. These regulations are no longer necessary because SBA is no longer authorized to select new ILP Intermediaries. The removal of these regulations will assist the public by simplifying SBA's regulations. SBA is also making two conforming amendments to avoid confusion.

DATES: This rule is effective [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: Daniel Upham, Chief, Microenterprise Development Division, Office of Financial Assistance (202) 205-7001 or daniel.upham@sba.gov.

SUPPLEMENTARY INFORMATION:

I. Background Information

Part 109, Intermediary Lending Pilot Program

The Intermediary Lending Pilot (ILP) program was authorized by Congress as a 3-year pilot program in the Small Business Jobs Act of 2010, Public Law 111-240, enacted September 27, 2010. Under the ILP program, SBA provided loans to selected nonprofit intermediaries (ILP Intermediaries) for the purpose of providing loans to small businesses. Currently, there are 33 lenders participating in the ILP program. SBA was authorized to make loans to ILP Intermediaries in fiscal years 2011, 2012, and 2013.

SBA published a proposed rule on March 5, 2020, proposing to remove three regulations from the Code of Federal Regulations (CFR) that are no longer necessary because SBA is no longer authorized to select new ILP Intermediaries. 85 FR 12875 (March 5, 2020). The proposed rule also contained two conforming amendments. SBA received no comments to these proposed ILP changes. Therefore, SBA is proceeding with the changes as proposed.

II. Section by Section Analysis

A. Section 109.200, Application to become an ILP Intermediary.

This section describes the application process to become an ILP Intermediary, including publication of a Notice of Funds Availability (NOFA) in the *Federal Register* to announce the availability of funds for the program and specify any special rules, procedures, and restrictions for a particular funding round. This section also includes the requirements for an ILP Intermediary application.

B. Section 109.210, Evaluation and selection of ILP Intermediaries.

This section describes the process by which SBA evaluates ILP Intermediary applications. The rule specifies that SBA will make loans to not more than 20 selected ILP Intermediaries, and that applications will be evaluated and scored based on the criteria specified in the NOFA.

C. Section 109.220, Loan limits - loans to ILP Intermediaries.

Section 109.220 states that no ILP Intermediary may receive more than \$1 million in ILP Loans.

SBA's authority to make loans to ILP Intermediaries has expired; therefore, SBA is not accepting any new ILP Intermediary applications. Since the program no longer allows for new ILP Intermediaries, the removal of these three regulations will reduce confusion and regulatory burden. Requirements for current ILP Intermediaries are found in the remaining provisions of part 109.

D. Conforming Amendments

In addition to removing the three regulations described above, the final rule also makes two conforming amendments. First, SBA is revising the definition of ILP Intermediary in section 109.20 to remove reference to the competitive application process. Because the regulations describing the application process (sections 109.200 and 109.210) have been removed, this revision is necessary to avoid confusion. Second, SBA is removing the cross-reference to section 120.173, Lead-based paint, in section 109.440. Section 109.440 states that loans made by an ILP Intermediary must comply with all applicable laws, including SBA's Lead-based paint regulation in section 120.173. In a separate rulemaking, SBA is proposing to remove section 120.173 because it is no longer necessary—16 CFR part 1303 already bans paint containing a concentration of lead in excess of 0.009% (90 parts per million) for use in residences, schools, hospitals, parks, playgrounds, and public buildings or other areas where consumers will have direct access to the painted surface. Therefore, SBA is removing the cross-reference in part 109 as well.

III. Compliance with Executive Orders 12866, 13771, 12988, and 13132, the Paperwork Reduction Act (44 U.S.C., Ch. 35), and the Regulatory Flexibility Act (5 U.S.C. 601-612)

A. Executive Order 12866

The Office of Management and Budget (OMB) has determined that this rule does not constitute a significant regulatory action for purposes of Executive Order 12866 and is not a major rule under the Congressional Review Act, 5 U.S.C. 801, et seq.

B. Executive Order 13771

This final rule is expected to be an Executive Order 13771 deregulatory action with an annualized net savings of \$8,980 and a net present value of \$128,285 in savings, both in 2016 dollars. This rule will remove information about applying to the ILP

program which will save potential applicants time in reading and researching/inquiring about this obsolete program and reduce confusion around whether applications are being accepted.

SBA is aware of approximately 500 nonprofit lenders that could potentially search for and read about applying for the ILP program. Assuming that, each year, 20 percent of these nonprofit lenders would review SBA's ILP regulations and that each would save one hour of review time due to removal of the regulations discussed in this rule, these nonprofits would be relieved of 100 burden hours. Valuing this time at \$124.90 per hour—the wage of a financial manager based on 2019 BLS data and adding 100% more for benefits and overhead, this produces total savings per year of \$12,450 in current dollars.

C. Executive Order 13777

On February 24, 2017, the President issued Executive Order 13777, Enforcing the Regulatory Reform Agenda, which further emphasized the goal of the Administration to alleviate the regulatory burdens placed on the public. Under Executive Order 13777, agencies must evaluate their existing regulations to determine which ones should be repealed, replaced, or modified. In doing so, agencies should focus on identifying regulations that, among other things: eliminate jobs or inhibit job creation; are outdated, unnecessary or ineffective; impose costs that exceed benefits; create a serious inconsistency or otherwise interfere with regulatory reform initiatives and policies; or are associated with Executive orders or other Presidential directives that have been rescinded or substantially modified. SBA has engaged in this process and has identified the regulations in this rulemaking as appropriate for removal in accordance with Executive Order 13777.

D. Executive Order 12988

This action meets applicable standards set forth in sec. 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden. The action does not have retroactive or preemptive effect.

E. Executive Order 13132

This rule does not have federalism implications as defined in Executive Order 13132. It will not have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in the Executive order. As such it does not warrant the preparation of a Federalism Assessment.

F. Paperwork Reduction Act

The SBA has determined that this final rule does not affect any existing collection of information.

G. Regulatory Flexibility Act

When an agency issues a rulemaking proposal, the Regulatory Flexibility Act (RFA) requires the agency to “prepare and make available for public comment an initial regulatory flexibility analysis” which will “describe the impact of the proposed rule on small entities.” (5 U.S.C. 603(a)). Section 605 of the RFA allows an agency to certify a rule, in lieu of preparing an analysis, if the proposed rulemaking is not expected to have a significant economic impact on a substantial number of small entities.

SBA is aware of approximately 500 nonprofit lenders that could potentially search for and read about applying to the ILP program. The removal of obsolete regulations related to the ILP program would reduce confusion for these lenders and the time required to read and/or inquire about obsolete regulations. The total annual savings to these nonprofit lenders is \$12,450 in current dollars, or about \$25 per nonprofit lender. More information on this estimate can be found in the Executive Order 13771 discussion above.

Accordingly, the Administrator of the SBA hereby certifies that this rule will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 13 CFR Part 109

Community development, Loan program—business, Reporting and recordkeeping requirements, Small businesses.

Accordingly, for the reasons stated in the preamble, SBA amends 13 CFR part 109 as follows:

PART 109 – INTERMEDIARY LENDING PILOT PROGRAM

1. The authority citation for part 109 continues to read as follows:

Authority: 15 U.S.C. 634(b)(6), (b)(7), and 636(l).

2. Amend § 109.20 by revising the definition of “ILP Intermediary” to read as follows:

§ 109.20 Definitions.

* * * * *

ILP Intermediary means a private, nonprofit entity that has received an ILP Loan.

* * * * *

§§ 109.200, 109.210, and 109.220 [Removed and reserved]

3. Remove and reserve §§ 109.200, 109.210, and 109.220.

§ 109.440 [Amended]

4. Amend § 109.440 by removing the words “120.173 (Lead-based paint),”.

Jovita Carranza
Administrator.

